

**CREITZ & SEREBIN LLP**

Joseph A. Creitz  
100 Pine Street, Suite 1250  
San Francisco, CA 94111  
Telephone: (415) 466-3090  
Fax: (415) 513-4475  
Email: [joe@creitzserebin.com](mailto:joe@creitzserebin.com)

**WALCHESKE & LUZI, LLC**

Paul M. Secunda (*Pro hac vice*)  
235 N. Executive Dr., Suite 240  
Brookfield, Wisconsin 53005  
Telephone: (414) 828-2372  
Fax: (262) 565-6469  
E-Mail: [psecunda@walcheskeluzi.com](mailto:psecunda@walcheskeluzi.com)

Counsel for Plaintiffs and Proposed Class

**MORGAN, LEWIS & BOCKIUS LLP**

Mark A. Feller, Bar No. 319789  
One Market, Spear Street Tower  
San Francisco, CA 94105-1126  
Tel: +1.415.442.1000  
Fax: +1.415.442.1001  
[mark.feller@morganlewis.com](mailto:mark.feller@morganlewis.com)

Deborah S. Davidson (*pro hac vice*)  
110 N. Wacker Drive  
Chicago, IL 60606-1511  
Tel: +1.312.324.1159  
Fax: +1.312.324.1001  
[deborah.davidson@morganlewis.com](mailto:deborah.davidson@morganlewis.com)

Sean McMahan (*pro hac vice*)  
1717 Main Street, Suite 3200  
Dallas, TX 75201-7347  
Tel: +1.214.466.4000  
Fax: +1.214.466.4001  
[sean.mcmahan@morganlewis.com](mailto:sean.mcmahan@morganlewis.com)

Jared R. Killeen (*pro hac vice*)  
MORGAN, LEWIS & BOCKIUS LLP  
[jared.killeen@morganlewis.com](mailto:jared.killeen@morganlewis.com)  
2222 Market Street  
Philadelphia, PA 19103  
Tel: 215.963.5000

Attorneys for Defendants  
SERVICENOW, INC. AND THE BOARD  
OF DIRECTORS OF SERVICENOW, INC.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAUL S. RUBKE and SHERIDA DU LAC DE  
FUGERES, individually and as representatives  
of a Class of Participants and Beneficiaries of  
the ServiceNow, Inc. 401(k) Plan,

Plaintiffs,

v

SERVICENOW, INC. and  
BOARD OF DIRECTORS OF  
SERVICENOW, INC.,

Defendants.

Case No. 3:24-cv-01050-TLT

**JOINT ADMINISTRATIVE MOTION  
TO VACATE DEADLINES IN  
SCHEDULING**

Second Am. Compl. Filed: November 8, 2024

Judge: Trina L. Thompson

Pursuant to Local Rule 7-11 and 7-12, and this Court’s Standing Order for Civil Cases, Paul S. Rubke and Sherida Du Lac De Fugeres (together, “Plaintiffs”) and ServiceNow, Inc., and the Board of Directors of ServiceNow, Inc. (together, “Defendants,” and collectively the “Parties”), respectfully ask this Court to vacate all deadlines set in the Court’s Case Management and Scheduling Order (Dkt. No. 38) and to reset those deadlines only in the event the Court denies dismissal of any of the claims asserted in the Second Amended Complaint. As explained below, good cause exists to vacate the current deadlines.

### **PROCEDURAL BACKGROUND**

Plaintiffs filed this action on February 21, 2024. Dkt. No. 1. Plaintiffs filed an amended complaint (the “Amended Complaint”) on May 27, 2024. Dkt. No. 24. On June 21, 2024, Defendants moved to dismiss the Amended Complaint. Dkt. No. 28.

On August 12, 2024, the Court entered a Case Management and Scheduling Order setting deadlines in this action. Dkt. No. 38. On the same date, the Parties filed a joint administrative motion to stay discovery pending the Court’s ruling on Defendants’ motion to dismiss the Amended Complaint. Dkt. No. 39. On August 20, 2024, the Court granted the Parties’ motion to stay discovery. Dkt. No. 40. On September 18, 2024, the Court dismissed the Amended Complaint under Rule 12(b)(6), but granted Plaintiffs leave to file a second amended complaint. Dkt. No. 41.

On September 26, 2024, Plaintiffs filed a motion seeking “limited” discovery before amending their complaint to allow them “to cure the pleadings defects that the Court pointed out in its Order granting Defendants’ Motion to Dismiss.” Dkt. No. 44. On October 2, 2024, the Court granted Plaintiffs’ motion in part, explaining the discovery stay was “lifted for the limited purposes of allowing Plaintiffs to gather facts they believe will cure the pleading defects that the Court pointed out in its Order granting Defendants’ Motion to Dismiss.” Dkt. No. 51 at 2.

On October 21, 2024, Magistrate Judge Kang ordered Defendants to produce four limited categories of documents: “(1) Plan investment policy statements; (2) Plan fee disclosures provided to Plan participants; (3) Plan Committee meeting minutes and Plan Committee documents which expressly discuss . . . the American Century TDFs; and (4) investment monitoring reports utilized

1 by the Plan Committee concerning TDFs.” Dkt. No. 61. Defendants completed the production of  
 2 these materials on November 3, 2024. Dkt. No. 65.

3 On November 8, 2024, Plaintiffs filed their Second Amended Complaint. Dkt. No. 66. On  
 4 December 13, 2024, Defendants moved to dismiss the Second Amended Complaint. Dkt. No. 69.  
 5 That motion to dismiss is fully briefed. Dkt. Nos. 76, 77. The Court has not set a hearing date.

6 **GOOD CAUSE EXISTS TO VACATE THE CURRENT SCHEDULE**

7 The Parties understand discovery remains stayed consistent with the Court’s prior rulings.  
 8 The Parties now jointly ask the Court to vacate the current schedule and to reset the case  
 9 management deadlines only if the Court denies dismissal of any of Plaintiffs’ claims.

10 Under Rule 16(b)(4), “[a] schedule may be modified only for good cause and with the  
 11 judge’s consent.” Fed. R. Civ. P. 16(b)(4). “Rule 16(b)’s ‘good cause’ standard primarily considers  
 12 the diligence of the party seeking the amendment.” *Johnson v. Mammoth Recreations, Inc.*, 975  
 13 F.2d 604, 609 (9th Cir. 1992). “Although the existence or degree of prejudice to the party opposing  
 14 the modification might supply additional reasons to deny a motion, the focus of the inquiry is upon  
 15 the moving party’s reasons for seeking modification.” *Mammoth Recreations*, 975 F.2d at 609  
 16 (citation omitted). Here, the Parties jointly move the Court to modify the schedule, and neither  
 17 party will suffer any prejudice should the Court vacate the current deadlines as requested. *See*  
 18 *Burton v. AbbVie, Inc.*, 2024 WL 3207008, at \*1 (C.D. Cal. Feb. 21, 2024) (granting joint motion  
 19 to vacate case deadlines pending resolution of motion to dismiss); *Dosio v. Odeluga*, 2022 WL  
 20 88510, at \*1 (E.D. Cal. Jan. 7, 2022) (granting joint motion to vacate discovery and summary  
 21 judgment deadlines); *Grant v. Rios*, 2022 WL 525641, at \*1 (E.D. Cal. Feb. 22, 2022) (granting  
 22 unopposed motion to stay discovery and vacate other deadlines).

23 Good cause exists to vacate the deadlines in the Court’s Case Management and Scheduling  
 24 Order. The Court previously stayed all discovery pending its assessment of whether Plaintiffs have  
 25 stated a plausible claim. In response to Plaintiffs’ request for “plausibility” discovery, the Court  
 26 permitted “limited” discovery to allow Plaintiffs “to cure the pleadings defects that the Court  
 27 pointed out in its Order granting Defendants’ Motion to Dismiss” the Amended Complaint. Dkt.  
 28 Nos. 44 & 51. Defendants completed its production of this “plausibility” discovery on November

1 3, 2024. Dkt. No. 65. Since then, the Parties have conducted no other discovery.

2 The Parties agree that because the Court has stayed all but “limited” discovery, and because  
3 Defendants’ motion to dismiss the Second Amended Complaint is still pending, it would be a waste  
4 of the Parties’ and the Court’s time and resources to proceed with the current schedule before the  
5 Court decides if the Second Amended Complaint states plausible claims. To start, the Parties have  
6 not engaged in the type of discovery required for briefing a motion for class certification, including  
7 the depositions by Defendants of the named Plaintiffs, the depositions by Plaintiffs of any fact  
8 witnesses, and any expert discovery related to the scope of the class. Further, the Parties have not  
9 exchanged written discovery requests and responses, engaged in any discovery of electronically  
10 stored information (“ESI”) maintained by Defendants’ ESI custodians, or conducted any expert  
11 discovery related to Plaintiffs’ claims and alleged losses.

12 The Parties agree that it would be premature to engage in the anticipated discovery  
13 described above before the Court rules on Defendants’ pending motion to dismiss and determines  
14 whether Plaintiffs’ claims may proceed based on the limited discovery previously conducted. *See*  
15 *Arcell v. Google LLC*, 2022 WL 16557600, at \*1 (N.D. Cal. Oct. 31, 2022) (staying discovery  
16 deadlines would “promote efficiency and avoid undue burden to Defendants” where the discovery  
17 tends to be “broad, time-consuming and expensive.”). Moreover, it would be premature to engage  
18 in time-consuming and costly briefing regarding class certification and, ultimately, summary  
19 judgment if the Court were to dismiss the Second Amended Complaint. *See Burton*, 2024 WL  
20 3207008, at \*1 (staying expert discovery pending resolution of motion to dismiss); *Dosio*, 2022  
21 WL 88510, at \*1 (vacating discovery and summary judgment deadlines pending resolution of  
22 dispositive motion); *Wendell v. Johnson & Johnson*, 2012 WL 3042302, at \*1 (N.D. Cal. July 25,  
23 2012) (granting joint motion to vacate all case management deadlines and stay discovery).

24 Therefore, the Parties ask the Court to vacate all deadlines set in the Court’s Case  
25 Management and Scheduling Order and to reset those deadlines only if the Court denies dismissal  
26 of any of the claims asserted in the Second Amended Complaint. Should the Court deny  
27 Defendants’ motion to dismiss in whole or in part, the Parties will propose a new schedule for the  
28 Court’s consideration within three weeks of that ruling.

Dated: February 12, 2025

WALCHESKE & LUZI, LLC

MORGAN, LEWIS & BOCKIUS LLP

By /s/ Paul M. Secunda  
 Paul M. Secunda (*Pro hac vice*)  
 235 N. Executive Dr., Suite 240  
 Brookfield, Wisconsin 53005  
 Telephone: (414) 828-2372  
 Fax: (262) 565-6469  
 E-Mail: [psecunda@walcheskeluzi.com](mailto:psecunda@walcheskeluzi.com)

By /s/ Deborah S. Davidson  
 Deborah S. Davidson (*pro hac vice*)  
 110 N. Wacker Drive  
 Chicago, IL 60606-1511  
 Telephone: +312.324.1159  
 Facsimile: +312.324.1001  
[deborah.davidson@morganlewis.com](mailto:deborah.davidson@morganlewis.com)

CREITZ & SEREBIN LLP  
 Joseph A. Creitz  
 100 Pine Street, Suite 1250  
 San Francisco, CA 94111  
 Telephone: (415) 466-3090  
 Fax: (415) 513-4475  
 Email: [joe@creitzserebin.com](mailto:joe@creitzserebin.com)

Sean K. McMahan (*pro hac vice*)  
 1717 Main Street, Suite 3200  
 Dallas, TX 75201  
 Telephone: +1.214.466.4000  
 Facsimile: +1.214.466-4001  
[sean.mcmahan@morganlewis.com](mailto:sean.mcmahan@morganlewis.com)

*Counsel for Plaintiffs and Proposed Class*

Mark A. Feller, Bar No. 319789  
 One Market, Spear Street Tower  
 San Francisco, CA 94105-1126  
 Tel: +1.415.442.1000  
 Fax: +1.415.442.1001  
[mark.feller@morganlewis.com](mailto:mark.feller@morganlewis.com)

Jared R. Killeen (*pro hac vice* forthcoming)  
 MORGAN, LEWIS & BOCKIUS LLP  
[jared.killeen@morganlewis.com](mailto:jared.killeen@morganlewis.com)  
 2222 Market Street  
 Philadelphia, PA 19103  
 Tel: 215.963.5000

*Attorneys for Defendants*

### L.R. 5-1(h)(3) Certification

Pursuant to Local Rule 5-1(h)(3), I attest that concurrence in the filing of the foregoing document has been obtained from each of the other Signatories.

/s/ Mark A. Feller  
 Mark A. Feller